165923 - They formed a partnership with capital from both of them and labour from one of them only, so who should bear the loss?

the question

A brother and I agreed to form a partnership by starting a store selling women's shoes. The agreement was that I would invest capital of ten thousand dollars and he would provide a store of which the market value is also ten thousand dollars. We agreed that profits and losses would be shared equally. After four months, we incurred a loss, but my partner says: I will not bear the loss with you, because this agreement is mudarabah (profit-sharing), not a partnership. And he does not accept that he should bear any loss with me. My question to you is: is this agreement a partnership or is it actually mudarabah?

Detailed answer

Praise be to Allah.

Mudarabah (profit-sharing) is a kind of partnership in which one partner puts in capital and the other puts in labour. If both parties put in both capital and labour, this is called an `anan partnership.

If the capital was invested by both of you and the labour came from only one of you, then according to some of the jurists, this is an 'anan partnership, and according to others it is a kind of mixture between 'anan and mudarabah. Some jurists stipulated that the one who puts in the labour (and actually runs the business) should receive more of the profit than his partner in that case, but the more correct view is that that is not stipulated.

It says in *Ar-Rawd al-Murbi`* regarding the definition of the `anan partnership: This is when two people – or two or more – form a partnership and each of them puts in a known amount of money, even if it is not equal amounts, so that they both contribute to doing the work needed, or one of

them does the work and in return receives more of the profit than he would receive based on his capital alone, so if he is paid less than that (meaning profit on his capital only), that is not valid. End quote.

Shaykh Ibn `Uthaymin (may Allah have mercy on him) said: If he says, only one of us will work on the project, it says in *Ar-Rawd* that this is an `anan partnership, but the apparent meaning of the original text is that it is not an ‘anan partnership. What appears to be the case is that it is similar to ‘anan and it is also similar to mudarabah. The fact that one of them is contributing both his capital and his labour makes this similar to ‘anan, whilst the fact that one of them is not contributing his labour – rather he is contributing his capital – makes this similar to mudarabah. Therefore we can say that it is a combination between mudarabah and `anan. But in this type of partnership it is stipulated that the one who puts in the labour (and runs the business) should receive more profit than he is entitled to on the basis of his capital alone, so that it will reflect the mudarabah aspect of the partnership. For example, you brought ten thousand riyals and he brought ten thousand riyals, and you said to him: You do the work and run the business, because I cannot help you in that, and you will have one half of the profit. This is not valid; he should have more than the profit on his capital, because the one who contributes capital but does not do any of the work will receive the profit of his capital in full, whereas the one who puts in both capital and labour will gain nothing except the profit on his contribution to the capital only. In this case, he will be doing work for free and he will not benefit from it at all.

In my view, there is nothing wrong with the one who does the work receiving a share of the profit based on his contribution to the capital only, because if the one who contributes capital but does not do any of the work is to be given his money in full, that is an act of kindness on the part of the one who is running the business, and who should say that it is not allowed to do an act of kindness? Is it not permissible to give him my money so that he can do business with it and then I take all the profit and he is just a volunteer who is working for me?

The correct view is that it is permissible for him to be given profit commensurate with the amount of capital that he put in; thus he will be doing an act of kindness to his partner.(*Sharh al-Mumti`*,

9/403).

Whether this partnership is called `anan or is described as a combination of mudarabah and `anan, the loss incurred in this case is to be born commensurate with the amount of capital invested by each party. This is a general principle. So just as two people may both contribute capital, any losses are to be borne commensurate with the amount invested by each party. So if they put in equal amounts of capital, then the lossis to be shared equally between them.

In the case of pure mudarabah, in which one side puts in capital and the other puts in labour, in that case the loss is to be borne by the owner of the capital.

Ibn Qudamah (may Allah have mercy on him) said in *Al-Mughni* (5/22): Loss within a partnership is to be borne by each partner commensurate with the amount of capital that he contributed. If what they contributed was equal, then the loss is shared equally between them. If there were three partners, the loss should be divided into three parts, and we do not know of any difference of opinion concerning that among the scholars. It is the view of Abu Hanifah, ash-Shafa`i and others…

In the case of mudarabah, any loss affects the capital only, and the worker is not to be affected, because the loss represents a decrease in capital, and this only affects the one who owns the money; it does not affect the worker at all. So the owner, and no one else, should bear the loss, and they only share any profit that is made. End quote.

In *Al-Mawsu`ah al-Fiqhiyyah* (44/6) it says: The jurists are agreed that, generally speaking, losses in partnerships are to be borne by all partners commensurate with the share of capital invested by each of them, and it is not permissible to stipulate anything other than that. Ibn `Abidin said: There is no difference of scholarly opinion regarding the fact that stipulating that any losses are to be borne in a way contrary to the amount of capital that one invested is not valid.

They are also agreed that the partner in a mudarabah contract who only contributed labour should not bear any of the loss; rather the loss is to be borne in full by the owner of the capital. That is in contrast to profit, which is to be shared in accordance with what they stipulated in the agreement.

However, the jurists have stated that if the partner providing labour in a mudarabah agreement makes a profit then suffers a loss, the loss is to be taken from the profit so long as the mudarabah partnership is ongoing.

Conclusion: the loss is to be borne equally between the two of you, whether the partnership is called `anan or a combination of `anan and mudarabah.

And Allah knows best.